No. 97-1565

Supreme Court, U. S.
FILED
JUN 8 1998

IN THE

Supreme Court of The United States

OCTOBER TERM, 1997

THE STATE OF MISSISSIPPI,

Petitioner,

VERSUS

BYRON RODERICK, BILLY SAXTON and CYNTHIA SAXTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE MISSISSIPPI RACKETEER INFLUENCED CORRUPT ORGANIZATIONS ACT (RICO), MISS. CODE ANN. § 97-43-1 *et seq.*, THE COLLECTION OF AN UNLAWFUL DEBT, IS VOID FOR VAGUENESS?

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JURISDICTION LIES IN THE UNITED STATES SUPREME COURT.

Petitioner invokes the jurisdiction of this Court under the authority of 28 U.S.C. § 1257[1], this Court's authority to review a final judgment of the highest court of the state in which a state statute has been held repugnant to the Constitution. The sole issue *sub judice* is the validity of the Mississippi RICO statute as void for vagueness under the Fourteenth Amendment of the Constitution of the United States, §1; any other issue raised in Respondents' brief is simply not before this Court.

The Constitutional issue of void for vagueness was first raised by the Respondents in the Harrison County Circuit Court in a motion to quash the indictment, (App.-

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[1]Respondent correctly points out the inadvertent reversal of the section number in the Petitioner's Brief citing 28 U.S.C. § 1275 instead of 28 U.S.C. § 1257.

Circuit Court in a motion to quash the indictment, (App.-48)[2], which charged the Respondents with the substantive RICO offense of collection of an unlawful debt through the enterprise of loaning money and the conspiracy to violate the Mississippi RICO Act. Quashing the indictment, the circuit court held that Miss. Code Ann. 97-43-1 *et seq.*, the Mississippi RICO Act, by purportedly creating a crime of usury was "unconstitutionally vague."[3] (App.-31). Petitioner appealed the question of law to the Mississippi Supreme Court, which affirmed the circuit court's order, finding that Mississippi's RICO Act was "unconstitutionally

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[2]Appendix, Petitioner's Petition for Writ of Certiorari to the Mississippi Supreme Court.

[3] Respondent's motion to quash the indictment erroneously sought to test the legal sufficiency of the State's evidence, a matter reserved for trial and not to be litigated in pretrial or this forum. *Grady v. State*, 281 So. 2d 678,680 (Miss. 1973).

vague as applied to usury."[4] (App.-22). Motion for rehearing was denied, and the Petitioner now appeals to this Court for relief.

Respondents' contention that the Mississippi Supreme Court failed to analyze the question under federal jurisprudence is erroneous. Citing this Court's void for vagueness doctrine, the Mississippi Supreme Court analyzed the state RICO Act in terms of notice and application requirements.[5] The Constitutionality of the statue was addressed under the federal Constitution, and the Court specifically acknowledged the state statute's precursor, the Federal RICO Act, 18 U.S.C.A. § 1962.[6]

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[4]*State v. Roderick*, 704 So.2d 49 (Miss. 1997).

[5]*Id.*, 704 So. 2d at 53, relying on *Connally v. General Construction Co.*, 269 U.S. 385 (1926), the court specifically analyzed the state RICO statute under the Fourteenth Amendment.

[6] The court acknowledged that the state RICO Act was modeled on the federal RICO Act. *Id.*, 704 So. 2d

The federal issue of void for vagueness under the Fourteenth Amendment was pressed and passed on in the final decision of the highest state court. *See, Illinois v. Gates*, 462 U.S. 213,218 (1983) and Judge Posner's opinion in *Lynk v. Laporte Superior Court No. 2,* 789 F. 2d 554,564 (7th Cir. 1986). Therefore, this Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Respondents cite the obvious, *i.e.*, they were not indicted under the federal RICO Act, 18 U.S.C.A. §1962; the indictment clearly referenced the Mississippi RICO Act, which clearly set forth the prohibited acts of collection of an unlawful debt and conspiracy to collect

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49,54 (Miss. 1997).

an unlawful debt. (App. -48). The State of Mississippi reasserts its position that the facts of the case are not peculiar, and under the notice and application requirements of the Fourteenth Amendment, Respondents fall squarely under the cloak of the state RICO Act, which like its federal counterpart prohibits loansharking. In this case of first impression challenging the state RICO Act, the interpretation of the state law did not follow the findings of this Court in *H.J., Inc. V. Northwestern*, 492 U.S. 229 (1989) and *Fort Wayne Brooks, Inc. v. Indiana*, 489 U.S. 46 (1989). Mississippi's limiting of the broad and remedial purposes set forth by Congress and adopted by the Mississippi Legislature, *e.g.,* to establish new penal provisions and enhanced punishments to deal with loansharking[7], will lead to a narrowing of Fourteenth

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[7]*Organized Crime Control Act of 1970,* Statement of Findings and Purpose, 84 Stat. 922-23.

Amendment interpretation as applied to both state and federal RICO.[8]

ARGUMENT

While not admitting to any of the Respondents' allegations, Petitioner refers the Court to the facts stated in its brief and the indictment and does not accept or stipulate to Respondent's version of the facts of this case,

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[8]The Mississippi Supreme Court's opinion is in conflict with this Court's holding of Constitutionality of federal RICO in *N.J., Inc. v. Northwestern Bell*, 492 U.S. 229 (1989). Constitutional challenges to state statutes include but are not limited to the following decisions: *Freeman v. State,* 554 So.2d 621 (Fla. Dist. Ct. App. 1989) (state RICO statute not unconstitutionally vague); *Corp. v. Goldsmith,* 504 N.E. 2d 559 (Ind. 1987) (state RICO Act constitutional; *State v. Passante,* 542 A.2d 952 (N.J. 1987) (state RICO act constitutional); *State v. Romig,* 73 Or. App. 780, 700 P.2d 293 (1985) (state RICO Act constitutional); *State v. Thompson,* 751 P.2d 805 (Utah Ct. App. 1988)(same). *But cf. State v. Feld,* 155 Ariz. 88, 745 P.2d 147 (Ct. App. 1987) (certain remedies given to state under state RICO Constitutional, certain are not).

an effort to distract from the single issue before this Court, the Constitutionality of the Mississippi RICO Act's prohibited acts of the collection of an unlawful debt through loansharking.[9] Respondents rely on Miss. Code Ann. 1972 § 75-17-5 for the premise that they were discounting notes and were not in the business of loaning money, therefore they were not subject to the RICO statute, pleading a mistake of law defense.[10] Respondents' arguments are specious at best, failing to cite any law which sanctions their business practice,

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[9] See, *U.S. v. Coonan*, 938 F. 2d 1553 (2nd Cir. 1991)(federal RICO constitutional, loansharking). *Cf.*, *U.S. v. Blinder*, 10 F. 3d 1468 (9th Cir. 1993)(enterprise of brokerage houses and blind pool companies, federal RICO not unconstitutionally vague).

[10] *Polakoff v. State,* 596 So. 2d 385 (Fla. App. 5 Dist. 1991) is distinguishable in that indictment failed for specific referral to either of Florida's usury statutes. Mississippi has only one usury statute. Miss. Code Ann. 1972 § 75-17-1 *et seq.*

which are clearly delineated in the indictment .[11] Respondents' intent to violate the law is a matter of proof at trial. In light of the excessive interest charged, the Mississippi Supreme Court specifically found that if Respondents were in the business of discounting notes, the 8% interest rate set by the state usury statute was applicable to the transactions of the Respondents. *Roderick*, 704 So. 2d at 53.

Justice Banks focused on the issue of vagueness, stating Legislative authority to criminalize conduct and

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[11]The label placed on the charge is not determinative whether the transaction is a loan. If the charge is ... "compensation for the use, forbearance, or detention of money, it is by definition interest regardless of the label placed upon it or the artfulness with which it is concealed." *Najarro v. SASI International*, 904 F. 2d 1002, 1006 (5th Cir. 1990). Relying on *Dixon v. Brooks*, 678 S.W. 2d 728,729 (Tex. App-- Houston [14th Dist.] 1984), the Fifth Circuit in *Najarro*, at 1010, also found that a contract would be usurious if there were any "mode or contingency by which the lender could receive more than the maximum rate of interest allowed by law."

Respondents' lack of law which sanctioned the charging of interest in amounts as much as 832% per annum. *Id.* Additionally, the justice did not give credence to Respondents' contentions that their efforts to get approval for their business practices by allegedly contacting the Attorney General's office or the efforts of the Attorney General to seek regulatory authority over the check cashing industry, somehow excused the acts of Respondents or were relevant to the determination of the vagueness of the statue.[12] Likewise, the analysis of the Constitutionality of the state RICO statute must be

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[12]Respondents cite *U.S. Biasucci*, 786 F. 2d 504,512 (1986), for the proposition that they were charged with the "predicate act" of usury, which is a civil defense, evincing their misunderstanding of RICO. The necessity of proving predicate crimes is peculiar to proof of a "pattern of racketeering activity" and not to the "collection of an unlawful debt', which may be proved by the collection of a single debt. *U.S. v. Pepe*, 747 F. 2d 632 (11th Cir. 1984). Petitioner argues that RICO refers to the usury law to detemine the legal rate of interest.

bottomed on principles of statutory interpretation and not unversacious, lack of legal argument in an effort to excuse Respondents' criminal activity.

CONCLUSION

For the above and foregoing reasons the State of Mississippi would submit that this Court review the decision of the Mississippi Supreme Court reversing the holding that the Mississippi RICO Act was void for vagueness under Fourteenth Amendment Due Process.

Respectfully submitted,

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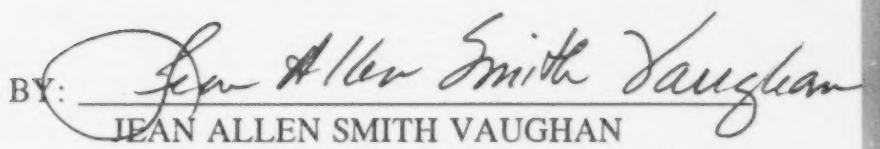
BY: 
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